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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/805,174	03/19/2004	Brian K. Beesley	23221	7386
20551	7590	11/10/2005		
THORPE NORTH & WESTERN, LLP. 8180 SOUTH 700 EAST, SUITE 200 SANDY, UT 84070			EXAMINER SOOHOO, TONY GLEN	
			ART UNIT 1723	PAPER NUMBER
DATE MAILED: 11/10/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/805,174

Applicant(s)

BEESLEY, BRIAN K.

Examiner

Tony G. Soohoo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12, 15-23 is/are rejected.
- 7) ☒ Claim(s) 13 and 14 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>6-7-04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Double Patenting

1. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

2. Applicant is advised that should claim 2 be found allowable, claim 23 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 8-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is directed to a subcombination invention defined by the preamble "a stir stick configured for" an intended use with a combination of "a food mixer". Thus the invention is directed to the subcombination. However claims 8-11 cited structural details to the container usable with the stir stick, i.e. the combination used with the stir stick. Whereas as the invention is directed to the invention of the subcombination -stirrer stick, in contrast to a positive claim to an invention of a combination, such as shown by claims 12-22, the structural details recited in the subcombination claims 8-11 are patentably immaterial to the claimed subcombination stirrer stick invention and the features of claims 8-11 are deemed as being directed to the intended use of the stirrer stick. Accordingly the language of claims 8-11 are determined as only a modifier of the preamble of the container of claim 1 and is denied patentable distinction to the stirrer stick itself. Thus, claims 8-11 fail to further limit the claimed invention of the stirrer stick and fails to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 4-11 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Schauer 1998969.

7. Claims 1, 4-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Wright 320994.

The angle of twist appears to be about 90 degrees. It is noted that the claim does not require an exact 90 twist.

8. Claims 1, 4-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Armstrong 2939216.

The angle of twist chosen section may appear to be about 90 degrees in twist. It is noted that the claim does not require an exact 90 twist of no more or no less in angle.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 2-3 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Armstrong 2939216 in view of the teaching of Ericson, Design patent D32918.

Armstrong discloses all of the recited subject matter as defined within the scope of the claims with the exception of an enlarged stopper between the handle end at 12a, and the stem end at 11, 14.

The reference to Ericson, Design patent 32918 (D32918) teaches a kitchen tool having a handle E, a working end F and an enlarged curved shield A for providing

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shielding so as to guard or stop unwanted movement of material or debris from one end to the other end of the tool.

In view of the shown and teaching by the Ericson design patent that one may provide a handled tool with an enlarge stopper shield guard between the handle and tool ends, it is deemed that it would have been obvious to one of ordinary skill in the art to provide for the Armstrong stirring spoon tool with an enlarged curved stopper shield as shown by Ericson so as to prevent unwanted movement of material or debris from moving or falling to the other end.

11. Claims 12, 15-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Daniels, Jr 6527433 in view of Armstrong 2939216.

The Daniels 6527433 reference (cited on PTO 1449) discloses a combination of a stirrer 62 with a container 14 having a lid 54, a container spout, and motor base 18. The Daniels '433 reference discloses all of the recited subject matter as defined within the scope of the claims with the exception of having a stirring stick with a handle and twisted stem as recited in part c) i) ii).

The reference to Armstrong teaches a stirring spoon which has a handle the handle end at 12a, and the stem end at 11, 14 with a twisted end with may be used to stir a vessel.

In view of the teaching of Armstrong that a stirring spoon may have a handle, stem end and a twist section, it is deemed that it would have been obvious to one of ordinary skill in the art to further provide for an additional stirring spoon to be used with the combination of the device of Daniels, or substitute for the stirring stick of Daniels

with the stirring spoon of Armstrong so as to provide a more effective manner to stir material whereby it is deemed that it would have been a mere substitution or additional provision of another functional structural equivalent stirring device to be used in combination with the blender of Daniels.

Allowable Subject Matter

Claims 13-14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.


Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Sturup 3326533, Vincent 3417972, Doge 582852, Hager Des.232068, Perry 2143027, Shoemaker Des.235307, Keppeler 119168, Gray 2659581, Klaperich Des.290084, Thompon Des.55340, LaTour 2724894, Waldesbuehl 2634497, Bermudez Des.168016..

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tony G. Soohoo whose telephone number is (571) 272 1147. The examiner can normally be reached on 7-5PM, Tue-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Tony G Soohoo
Primary Examiner
Art Unit 1723
